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PATENT APPLICATION SERIAL #: 10/067,511 ART UNIT: 3763

TITLE: Drug Delivery Needle Device

EXAMINER: Mathew F. DeSanto

PAPER BEING TRANSMITTED:

Responce To Office Action Mailed May 5, 2004

TO: Examiner Mathew F. DeSanto

FROM: William J. Sapone, Esq., Reg. #32,518

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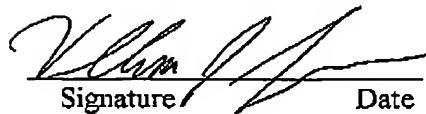
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Docket No.: 747/9-1647

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Thomas Frederick ENNS

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Serial No. : 10/067,511

Group Art No.: 3763

JUL 29 2004

Filed: : February 4, 2002

Examiner: Anhtuan T. Nguyen

For: : DRUG DELIVERY NEEDLE DEVICE

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RESPONSE TO OFFICE ACTION

Sir:

In response to the Office Action dated May 5, 2004, the applicant respectfully traverses the examiner's grounds for rejection.

Claims 1, 3, 4, 6, 7, 8, 9, 11, 12, 14, 15 and 16 were rejected as being anticipated by Lusson, DE-4426784.

A finding of anticipation requires that the publication describe all of the elements of the claims, arranged as in the patented device. Shearing v. Iolab Corp., 975 F.2d 1541, 1544-45, 24 U.S.P.Q. 2d 133, 1136 (Fed. Cir. 1992); Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989); Perkin-Elmer Corp v. Computervision Corp., 732 F.2d 888, 894, 221 U.S.P.Q. 669, 673 (Fed. Cir. 1984). C.R. Bard, Inc. V. M3 Sys., Inc., 157 F.3d 1340, 1349 (Fed. Cir. 1998). In addition, the reference must be enabling, placing the allegedly disclosed subject matter in the possession of the public. In re Spada 15 U.S.P.Q 2d 1655 (Fed. Cir. 1990).

Claim 1 requires a specific arrangement of components, that is, the device has a base 34 from which the needle portion 26 extends. Above this base is disposed a spacer having a first end integral with the base and a second end longitudinally spaced away to which opposed flexible handles are provided. A rigid spine is "located above the spacer and the handles". The rigid spine includes a first portion of the L-shaped needle therein, the handles being movable into contact with each other and the spine when grasped for insertion and removal of the needle device.

Lusson has a completely different structure. Lusson has a needle 10 extending downwardly from a support 18. Support 18 is itself best characterized as the base, there is no spacer provided. Integral with the base are a pair of wings. Note that the needle is situated entirely below the wings. Consequently, a rigid spine, located above the handles and having a first portion of an L-shaped needle therein is not found in Lusson. The grip 16 cannot meet the limitations of a rigid spine in accordance with claim 1. Further, the support, being beneath the wings, cannot meet the claim limitation of a rigid spine since this must be "located above" the handles, not below.

The claimed invention requires the handles to move upwardly to grasp the rigid spine located above the handles. No other conclusion is possible given the orientation of the detailed elements. The Lusson device only has wings which move downwardly, to surround the needle when it is withdrawn. Even were the wings to be upwardly movable, they cannot engage a rigid spine in accordance with applicant's claim 1.

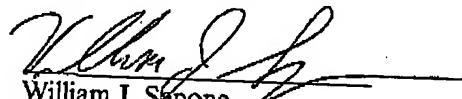
As each and every element is not found in Lusson, claim 1, and the claims dependent therefrom are not anticipated thereby. In the Lusson device, one could not engage the grip if the wings were upright, and then the "grip" would serve no function. Further on Page 6, it is described that the wings must move downwardly, not upwardly, for the apparatus to be installed.

Moving them upwardly would render the grip useless and indeed the Fig. 3 embodiment has specific structures to prevent such upward movement. Downward movement only is allowed to engage and encase the needle after withdrawal.

Consequently, the examiner's speculation as to the hinged movement of the wings is contradicted by the specific disclosure of structures to prevent just such a movement, and the Lusson patent does not enable one to practice the applicant's invention.

Based on the above remarks, reconsideration and allowance of the application is respectfully requested. However should the examiner believe that direct contact with the applicant's attorney would advance the prosecution of the application, the examiner is invited to telephone the undersigned at the number given below.

Respectfully submitted,



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